



October 21, 2002

Mr. Steven M. Kean
Senior Assistant City Attorney
City of Tyler - Legal Department
P.O. Box 2039
Tyler, Texas 75710

OR2002-5952

Dear Mr. Kean:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 170926.

The Tyler Police Department (the "department") received two requests for a videotape of a particular traffic stop and information related to disciplinary actions against the police officer who conducted the stop. You advise that you are releasing the videotape, as well as commendations contained in the officer's civil service personnel file, with the exception of the officer's social security number. You claim that the remaining requested information is excepted from disclosure under sections 552.101, 552.117, 552.1175, and 552.130 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We note that a portion of the submitted information consists of medical records, access to which is governed by the Medical Practice Act (the "MPA"), chapter 159 of the Occupations Code. Section 159.002 of the MPA provides:

- (a) A communication between a physician and a patient, relative to or in connection with any professional services as a physician to the patient, is confidential and privileged and may not be disclosed except as provided by this chapter.

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter, other than a person listed in Section 159.004 who is acting on the patient's behalf, may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

Information that is subject to the MPA includes both medical records and information obtained from those medical records. See Occ. Code §§ 159.002, .004; Open Records Decision No. 598 (1991). This office has concluded that the protection afforded by section 159.002 extends only to records created by either a physician or someone under the supervision of a physician. See Open Records Decision Nos. 487 (1987), 370 (1983), 343 (1982).

Section 159.002(c) also requires that any subsequent release of medical records be consistent with the purposes for which the governmental body obtained the records. Open Records Decision No. 565 at 7 (1990). Medical records may be released only as provided under the MPA. Open Records Decision No. 598 (1991). We have marked the submitted documents that consist of medical records and are therefore subject to the MPA. This information may be released only in accordance with the MPA.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Thus, section 552.101 encompasses information made confidential by statute. You indicate that the City of Tyler is a civil service city pursuant to chapter 143 of the Local Government Code. Section 143.089 of the Local Government Code provides for the maintenance of civil service files and what may be kept in those files:

(a) The director or the director's designee shall maintain a personnel file on each fire fighter and police officer. The personnel file must contain any letter, memorandum, or document relating to:

....

(2) any misconduct by the fire fighter or police officer if the letter, memorandum, or document is from the employing department and if the misconduct resulted in disciplinary action by the employing department *in accordance with this chapter*

....

(b) A letter, memorandum or document relating to alleged misconduct by the fire fighter or police officer may not be placed in the person's personnel file if the employing department determines that there is insufficient evidence to substantiate the charge of misconduct.

(c) A letter, memorandum, or document relating to disciplinary action taken against the fire fighter or police officer or to alleged misconduct by the fire fighter or police officer that is placed in the person's personnel file as provided by subsection (a)(2) shall be removed from the employee's file if the commission finds that:

(1) the disciplinary action was taken without just cause; or

(2) the charge of misconduct was not supported by sufficient evidence. [Emphasis added.]

Information that subsections 143.089(b) and (c) prohibit from being placed in the civil service file may be maintained in the department's internal files, as provided in section 143.089(g). This subsection provides:

A fire or police department may maintain a personnel file on a fire fighter or police officer employed by the department for the department's use, *but the department may not release any information contained in the department file to any agency or person requesting information relating to a fire fighter or police officer.* The department shall refer to the director or the director's designee a person or agency that requests information that is maintained in the fire fighter's or police officer's personnel file. [Emphasis added.]

The department may keep information in these separate, internal files for its own use. Section 143.089(g) makes records kept in the police department's internal files confidential. Cf. *City of San Antonio v. Texas Attorney General*, 851 S.W.2d 946. (Tex. App.--Austin 1993, writ denied) (police department files).

Chapter 143 addresses the following types of disciplinary actions: removal, suspension, demotion, and uncompensated duty. See Local Gov't Code §§ 143.051-.055. You represent that some of the records you submitted to our office consist of memoranda and internal affairs investigations that did not result in any disciplinary action as contemplated under chapter 143. Accordingly, we conclude that the submitted records which are maintained solely in the department's confidential internal file must be withheld from the public pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code.

However, we note that the submitted information that you state is maintained in the department's internal file includes an evaluation of the named officer. The section 143.089(a) personnel file also must contain "any letter, memorandum, or document relating to . . . the periodic evaluation of [the officer] by a supervisor." *Id.* § 143.089(a)(3). Thus, while this information, which we have marked, may be kept in the department's internal file, it must also be kept in the civil service personnel file. Local Gov't Code § 143.089(a)(1), (3). Therefore, although the evaluation maintained in the department's internal personnel file is confidential under section 143.089(g), the evaluation in the civil service personnel file is not confidential under that provision and may not be withheld under section 552.101 of the Government Code.

Furthermore, we note that you appear to have identified some documents as being maintained in the civil service personnel file under section 143.089(a), while indicating that they relate to internal investigations that did not result in disciplinary action as contemplated under chapter 143. As discussed above, documents relating to alleged misconduct that did not result in such disciplinary action are confidential under section 143.089. Thus, to the extent the documents we have marked are maintained in the civil service personnel file under section 143.089(a), they must be removed and placed in the department's internal personnel file under section 143.089(g), and must be withheld under section 552.101 of the Government Code.

We now address your arguments with respect to the remaining documents contained in the officer's civil service personnel file. Included among these documents is an accident report form that appears to have been completed pursuant to chapter 550 of the Transportation Code. *See* Transp. Code § 550.064 (officer's accident report). Section 550.065(b) of the Transportation Code states that except as provided by subsection (c), accident reports are privileged and confidential. Section 550.065(c)(4) provides for release of accident reports to a person who provides two of the following three pieces of information: (1) date of the accident; (2) name of any person involved in the accident; and (3) specific location of the accident. Transp. Code § 550.065(c)(4)). Under this provision, the Department of Public Safety or another governmental entity is required to release a copy of an accident report to a person who provides the agency with two or more pieces of information specified by the statute. *Id.* In the situation at hand, the requestor has not provided the department with two of the three pieces of information. Thus, you must withhold the accident report we have marked under section 552.101 of the Government Code in conjunction with section 550.065(b).

You contend that the named police officer's social security number, which is contained in the submitted commendations, is excepted from disclosure under sections 552.101, 552.117, and 552.1175 of the Government Code. Section 552.117(2) provides:

Information is excepted from [required public disclosure] if it is information that relates to the home address, home telephone number, or social security number, or that reveals whether the following person has family members:

...

- (2) a peace officer as defined by Article 2.12, Code of Criminal Procedure, or a security officer commissioned under Section 51.212, Education Code, regardless of whether the officer complies with Section 552.024.

Thus, the department must withhold the officer's social security number pursuant to section 552.117. *See* Open Records Decision No. 670 at 5-6 (2001) (governmental body "may withhold home addresses and home telephone numbers of peace officers, in addition to social security numbers and information that reveals whether the peace officer or security officer has family members, without the necessity of requesting an Attorney General decision as to whether the exception under section 552.117(2) applies").

In addition, the police officer's civil service personnel file contains the social security numbers of other individuals, which may be confidential under federal law. A social security number may be withheld in some circumstances under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that these social security numbers are confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 of the Act on the basis of that federal provision. We caution, however, that section 552.352 of the Act imposes criminal penalties for the release of confidential information. Prior to releasing these social security numbers, you should ensure that they were not obtained or are not maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

Finally, we turn to your claim under section 552.130 with regard to the remaining information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state[.]

Thus, the department must withhold the driver's license numbers you have marked within the information at issue under section 552.130 to the extent that the corresponding driver's licenses were issued in Texas.

In summary, we have marked the documents that may only be released in accordance with the MPA. The department must withhold the information that is maintained solely in its internal personnel file pursuant to section 552.101 of the Government Code in conjunction with section 143.089(g) of the Local Government Code. We have marked documents that must be removed from the civil service personnel file if contained therein and placed in the department's internal file under section 143.089(g). These documents must also be withheld under section 552.101. The department must withhold the accident report we have marked under section 552.101 in conjunction with section 550.065(b) of the Transportation Code. The police officer's social security number must be withheld under section 552.117. The social security numbers of other individuals may be confidential under section 552.101 and the federal Social Security Act. The department must withhold Texas driver's license numbers under section 552.130. The remaining requested information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

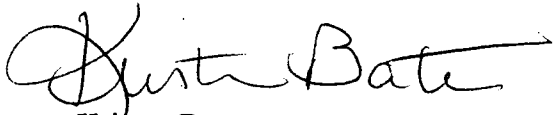
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "Kristen Bates".

Kristen Bates
Assistant Attorney General
Open Records Division

KAB/seg

Ref: ID# 170926

Enc. Submitted documents

c: Ms. Dana Dixon
KLTV-Channel 7
105 West Ferguson Street
Tyler, Texas 75701
(w/o enclosures)